

mortgage purposes. These 2 valuation reports therefore were prepared to estimate the value of the lands in question as security for the purpose of obtaining finance. We cannot but therefore wholly endorse the learned judge's assessment of the 3 valuation reports produced in this matter and his finding in the circumstances that the reserve price of \$270,000 was a fair estimate of the market value of the lands based on the valuation by Jones Lang Wootton which he found to be more reliable than the other two. There is therefore no justification for any complaint with regard to the reserve price fixed. In any event, in taking the passive and supine attitude the appellant did in not protesting against the valuation made by Jones Lang Wootton at the proper time when they had ample opportunity to do so they acted to their own detriment and at their peril and there is no reason why the 2nd respondent as the purchaser at a properly conducted sale should suffer as a result of their default which it would not be inapposite to categorize as wilful.

The argument for the appellant was so feeble and inevitably so brief that there was hardly anything for the respondents to answer. At the end of the day, and an extremely short one at that, we did not have to call upon counsel for the respondents and accordingly dismissed this appeal with costs and directed the deposit in court by way of security to go to the respondents to account of their taxed costs.

Appeal dismissed.

Solicitors: *Morris Edgar & Clough Thuraisingham; Allen & Gledhill.*

HAMZAH BIN ABDUL GHANI v. VERGHESE THOMAS

[O.C.J. (Mohamed Azmi J.) June 19, 1979]

[Kuala Lumpur — Civil Suit No. 2182 of 1976]

Damages — Quantum — Spine and multiple injuries — Wedge-compression fracture — General damages awarded \$22,000.

The plaintiff in this case was a twenty year old despatch clerk. He suffered the following injuries as a result of a motor accident: pain in the spine and chest, a small laceration over the left eye-brow, wedge-compression fractures of the second, third and fourth lumbar vertebrae, and a fracture of the right ischiopubic ramus. He was hospitalized for 12 days. Liability was found to be 50:50. There was no claim for special damages.

Held: (1) general damages was assessed as follows: (1) laceration and permanent scar over left eye-brow \$800, (2) wedge-compression fracture of 3 lumbar vertebrae with residual deformities \$18,000, (3) fracture of right pelvis \$4,500, (4) osteoarthritic changes \$2,000. The total sum was \$25,300;

(2) the learned judge taking into consideration the element of overlapping, the award was reduced to \$22,000. General damages was apportioned on a 50:50 basis.

Cases referred to:-

- (1) *Seet Kim Neo v. Yong Kim Sun* [1968] 2 M.L.J. xxii.
- (2) *Tan Jack v. Chung Sow Chan*, *Dass* on Quantum in Accident Claims @ 401 (unreported).
- (3) *Ng Cheng Hoe v. Tan Kai Boon*, *Dass* on Quantum in Accident Claims @ 403 (unreported).

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(4) *Foo Chik Seow v. Hashim bin Abdul Hamid & Ors.*, *Dass* on Quantum in Accident Claims @ 404 (unreported).

(5) *Appandurai v. Lim Puk Tow*, *Dass* on Quantum in Accident Claims @ 402 (unreported).

(6) *Wong Kum Peng v. Ngieng Kim Heek* [1965] 2 M.L.J. viii.

(7) *See Ong Lim v. Changi Bus Co. Ltd.* [1966] 1 M.L.J. xxxiv.

B

(8) *Ng Shin Hon v. Chow Wai Chuang* [1968] 1 M.L.J. 37, 39.

(9) *Woon Joke Buay v. Chan Eng Kian* [1968] 1 M.L.J. xliii.

(10) *Chang Go Yang v. Koh Han Tong* [1972] 2 M.L.J. lviii.

(11) *Paramsivam & Anor. v. Abdul Aziz & Ors.* [1976] 2 M.L.J. 91, 92.

C

CIVIL SUIT.

R.K. Nathan for the plaintiff.

Yaacob Sodhy for the defendant.

Cur. Adv. Vult.

D

Mohamed Azmi J.: This is a claim for damages for personal injuries and consequential loss sustained by the plaintiff from a road accident that occurred along Persiaran Swettenham, Kuala Lumpur, on July 4, 1974 at about 5.00 p.m. The plaintiff was riding motorcycle BE 8475 from the direction of Jalan Damansara towards Jalan Duta when a collision occurred with motor car AL 6725 driven by the defendant from the opposite direction. On the pleadings, the defendant denies liability and he also counterclaims \$1,264.69 as special damages in respect of his damaged car.

E

From the statement of agreed facts, the collision between the two vehicles is not disputed. It is further agreed that as a result of the accident, the plaintiff suffered injuries as shown in the medical report dated August 5, 1975 (AB1).

F

During the trial, liability is agreed by the parties on a 50/50 basis. On that basis, special damages for the plaintiff's actual loss of earning was agreed at \$400, and the sum of \$425 was also agreed in respect of the defendant's counterclaim. The only issue for determination is on the plaintiff's claim of general damages for pain and suffering and loss of amenities. There is no claim for loss of future earnings and loss of earning capacity.

G

As the issue is only confined to the quantum of general damages for pain and suffering and loss of amenities, both parties did not call any witness and they rest their case on submissions based on the pleadings, statement of agreed facts and the six documents in the agreed bundle of documents (AB1 to AB6).

H

In assessing damages for pain and suffering and loss of amenities, I take into consideration the fact that the plaintiff is a young man of twenty years working as a Despatch Clerk. He was taken to the Accident Unit of the University Hospital after the collision. He suffered pain in the spine and chest although he was not in shock. A small laceration was found over the left eye-brow. The spine was rigid and tender. X-rays showed wedge-compression fractures of the second, third and fourth lumbar vertebrae, and a fracture of the right ischiopubic ramus. He did not suffer any kidney injury or neurological

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deficit with his spinal injury. After being hospitalized for twelve days, he was found fit for discharge, although he was sent for physiotherapy as an outpatient.

For the small laceration of the left eye-brow, counsel for the defendant has suggested a figure between \$300 and \$400. Counsel for the plaintiff suggests a figure of \$1,500. The laceration has healed, but it leaves a permanent one-inch scar. In my view, although the scar is without keloid formation, it is very noticeable, and having regard to his age, the permanent scar will no doubt affect his facial appearance. In the event, a figure of \$800 would be fair and adequate.

As regards the wedge-compression fractures of the second, third and fourth lumbar vertebrae, a sum of about \$6,000 has been suggested by defence counsel on the authorities of *Seet Kim Neo v. Yong Kim Sun*,⁽¹⁾ *Tan Jack v. Chung Sow Chan*,⁽²⁾ *Ng Cheng Hoe v. Tan Kai Boon*,⁽³⁾ *Foo Chik Seow v. Hashim bin Abdul Hamid & Ors.*⁽⁴⁾ and *Appandurai @ Raju s/o Varthan v. Lim Puk Tow*.⁽⁵⁾ Counsel for the plaintiff, however, thinks that \$25,000 is more appropriate having regard to *Appandurai* case (*ante*). In that case, a construction worker suffered fracture of the transverse process of the second, third and fourth lumbar, severe backache, and weakness of the right foot. \$15,000 was awarded as general damages. It is true that *Appandurai* case is not exactly the same as the present case. The present plaintiff does not have severe backache or weakness of right foot and the period of hospitalization is shorter. It is also true that the present plaintiff does not suffer any neurological deficit as a result of the spinal injury. The case is, however, relevant, in that the main injuries, i.e. the three fractures of the left vertebrae, are the same as in the present case. Further, although the fractures of the lumbar vertebrae have united in this case, the union has left a slight bony prominence over the plaintiff's lower back. Apart from this residual defect, the plaintiff also has a permanent slight wedging of the second lumbar vertebra, and also the pain in his lower back, especially when doing work, is likely to continue for some time. (See AB5). Having regard to all these factors, I am of the view a sum of \$18,000 would be fair. In my view, the permanent residual deformity in the present case is more or less the same, if not more severe than *Appandurai* case. Further, the assessment of \$18,000 for the three wedge-compression fractures is not out of line with *Foo Chik Seow* case (*ante*) where \$4,000 was awarded for fracture of one vertebra, or with *Tan Jack* case (*ante*) where \$6,000 was awarded for a wedge fracture of third lumbar vertebra.

For the third injury, which is a fracture of the right ischiopubic ramus (pelvis), counsel for the defendant has suggested a figure of between \$2,000 and \$3,000 based on the authorities of *Wong Kum Peng v. Ngieng Kim Heek*⁽⁶⁾ (\$3,500), *See Ong Lim v. Changi Bus Co. Ltd.*⁽⁷⁾ (\$2,800), *Ng Shin Hon v. Chow Wai Chuang*⁽⁸⁾ (\$5,000), *Woon Joke Buay v. Chan Eng Kian*⁽⁹⁾ (\$2,500) and *Chang Go Yang v. Koh Han Tong*⁽¹⁰⁾ (\$4,000). Counsel for plaintiff has, however, suggested a figure of around \$5,000. Having regard to the authorities cited and the fact that this

A particular fracture has united without deformity, I would assess a sum of \$4,500.

According to Medical Report (AB5), osteoarthritic changes are likely to occur early in the area of the second lumbar vertebra. In *Paramasivam & Anor. v. Abdul Aziz & Ors.*,⁽¹¹⁾ I have assessed \$2,000 where arthritis was more likely than normal to develop in the ankle and right big toe of a young plaintiff. For the expected early osteoarthritic changes in this case, I will also allow a sum of \$2,000.

General damages for pain and suffering and loss of amenities are, therefore, assessed as follows:—

(1) laceration and permanent scar over left eye-brow	...	\$ 800.00
(2) wedge-compression fracture of three lumbar vertebrae with residual deformities	...	\$18,000.00
(3) fracture of right pelvis	...	\$ 4,500.00
(4) osteoarthritic changes	...	\$ 2,000.00
Total:		\$25,300.00

Taking into account overlapping in pain and suffering for the various injuries and other contingencies, I would reduce the award to a round figure of \$22,000 which, to my mind, is a fair assessment of general damages in this case.

On 50% liability, the defendant is liable in the sum of \$11,000.

Before entering judgment, both counsel informed the court that the plaintiff has abandoned his claim on special damages, and the defendant has also abandoned his counterclaim on special damages, although the quantum of both claims have been agreed earlier.

In the event, I enter judgment for the plaintiff in the sum of \$11,000 as general damages with interest at 6% per annum from date of service of writ to date of judgment and costs to be taxed; and, by consent, no order on special damages and no order on the counterclaim.

Order accordingly.

Solicitors: R.K. Nathan; Yaacob Sodhy.